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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/864,825	05/24/2001	Paul V. Werme	NC 83017	2372

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NAVAL SURFACE WARFARE CENTER, DAHLGREN DIVISION  
OFFICE OF COUNSEL, CODE XDC1  
17320 DAHLGREN ROAD  
DAHLGREN, VA 22448-5110

EXAMINER

TANG, KENNETH

ART UNIT PAPER NUMBER

2195

DATE MAILED: 08/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/864,825	<b>Applicant(s)</b> WERME ET AL.	
	<b>Examiner</b> Kenneth Tang	<b>Art Unit</b> 2195	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 26 April 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 8-20 and 22-36 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 16-20 and 22-36 is/are allowed.
- 6) ☒ Claim(s) 8-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

1. This action is in response to the Amendment filed on 4/26/06. Applicant's arguments have been fully considered but are not found to be persuasive.
2. Claims 8-20 and 22-36 are presented for examination.

### *Allowable Subject Matter*

3. Claims 16-20 and 22-36 are allowed.

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. **Claims 8-9, 12, and 14-15 are rejected under 35 U.S.C. 102(b) as being unpatentable over Du et al. (hereinafter Du) (US 6,041,306).**

5. As to claim 8, Du teaches on a host instantiating a managed characteristic computer program (*attribute, state, instances*) (*col. 2, lines 59-65, col. 5, lines 59-67 through col. 6, lines 1-10*), the managed characteristic application computer program (*col. 2, lines 59-65, col. 5, lines 59-67 through col. 6, lines 1-10*) being managed by at least the host, a resource management device of the host, the resource management device (*see Fig. 2*) generating signals responsive to

Art Unit: 2195

first information received by the resource management device regarding performance (*monitor and measure progress of the process instances created*) (*col. 8, lines 3-6, col. 10, lines 1-4*) of a plurality of application computer programs including the managed characteristic application computer program and second information received by the resource management device regarding performance of the host (*system monitoring and network communication, etc.*) (*col. 2, lines 7-10*), the signals including:

a signal that starts up an additional copy (instance) of the managed characteristic (attribute or state) application computer program on one of the host and a second networked host (database, etc.) (*col. Fig. 2, 21, 34a, or 34b, etc.*);

a signal shuts down (*stopped*) and restarts (restart or reset) (*col. 7, lines 17-24, 56-57*) the managed characteristic on the host; and

a signal that moves the managed characteristic to the second host (database, etc.) (*col. Fig. 2, 12a, 20, 23b, 26, 27, 21, 34a, or 34b, etc.*).

In addition, an M+1 copy is taught in Du where it is disclosed that there is scalability (*col. 5, lines 16-34, etc.*). If something is scalable, it can do the same for an extra/additional or an M+1 amount, etc. Un addition, Du teaches configuration management by of one of the hosts (*col. 10, lines 5-28*).

6. As to claim 9, Du teaches wherein the managed characteristic application computer program comprises a scalable application program (*col. 5, lines 16-34*).

Art Unit: 2195

7. As to claim 12, Du teaches the resource management device wherein the resource management device further generates signals responsive to third information received by the resource management device regarding the performance of hardware operatively coupling the networked hosts (*col. 8, lines 3-6, col. 10, lines 1-4, col. 2, lines 7-10*).

8. As to claim 14, Du teaches the resource management device wherein the managed characteristic application computer program further responds to user-initiated control actions (*users respond and interactive through the user interface, see Fig. 3, etc.*).

9. As to claim 15, Du teaches where the action requests are generated by an operator (*col. 4, lines 9-33*).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**10. Claims 10-11 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Du et al. (hereinafter Du) (US 6,041,306), and further in view of Chiu et al. (hereinafter Chiu) (US 6,654,029 B1).**

Art Unit: 2195

11. As to claims 10-11 and 13, Du teaches the resource management device wherein the managed characteristic application computer program comprises a fault tolerant application (*col. 4, lines 58-67, col. 7, lines 55-62*). Du fails to explicitly teach where the degree of fault tolerance is selectable by a user by priority. However, Chiu teaches a scalable, object-oriented architecture with a user selecting the priority (importance) level of fault tolerance (*col. 5, lines 20-25*). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Du and Chiu because the user could react based on importance (*col. 5, lines 20-25*).

### ***Response to Arguments***

12. During patent examination, the pending claims must be “given their broadest reasonable interpretation consistent with the specification.” *In re Hyatt*, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000). Applicant always has the opportunity to amend the claims during prosecution, and broad interpretation by the examiner reduces the possibility that the claim, once issued, will be interpreted more broadly than is justified. *In re Prater*, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-51 (CCPA 1969).

13. *Applicant argues that Du does not teach having a first signal that controls a configuration of an Mth copy and having a second signal for an M+1th copy, a third signal that controls shutdown and restart, and a fourth signal that controls movement, for example.*

In response, the office action has shown how Du has taught the claimed invention.

Applicant ignores the cited portions that the Examiner has pointed for this teaching in the

Art Unit: 2195

rejection. Instead, Applicant points to other areas of the reference. Applicant's arguments were not found to be persuasive.

*14. Applicant argues the 35 USC 103 rejection by stating that Chiu does not compensate for the deficiencies of Du.*

Again, the office action has shown how Du has taught the claimed invention. Applicant ignores the cited portions that the Examiner has pointed for this teaching in the rejection. Instead, Applicant points to other areas of the reference. Applicant's arguments were not found to be persuasive.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Art Unit: 2195

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kenneth Tang whose telephone number is (571) 272-3772. The examiner can normally be reached on 8:30AM - 6:00PM, Every other Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Meng-Ai An can be reached on (571) 272-3756. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Kt  
8/15/06

  
MENG-AI T. AN  
SUPERVISORY PATENT EXAMINER  
TECHNICAL CENTER 2100